

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NICOLLE BESUDEN,

Plaintiff,
-against-

NOTICE OF MOTION

21-CV-8452 (LAK)

THE CITY OF NEW YORK, ET. AL.,

Defendants.

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PLEASE TAKE NOTICE that upon the annexed Memorandum of Law dated August 15, 2022, and upon all prior pleadings and proceedings herein, defendants City of New York, Mayor Bill de Blasio, New York City Police Department (“NYPD”) Commissioner Dermot Shea, NYPD Chief Terence Monahan, Captain O’Hare, NYPD Deputy Inspector Elias Nikas, NYPD Captain Julio Delgado, NYPD Captain Michael John, Officer Yu Jian, Officer Patrick Connolly, Officer Cardenas, and Officer Edward Casaceli (hereinafter “City Defendants”) will move this Court, before the Honorable Lewis A. Kaplan, at the United States Courthouse for the Southern District of New York located at 500 Pearl Street, New York, New York 10007, for an order pursuant to Federal Rules of Civil Procedure (“FRCP”) 12(b)(6) to dismiss the First Amended Complaint against City Defendants, with prejudice, together with such other relief as this Court deems just and proper, on the grounds that: (1) Plaintiff’s false arrest and malicious prosecution claims as to the July 28, 2020, September 29, 2020, and October 25, 2020¹ incidents fail because probable cause existed to arrest and prosecute Plaintiff; (2) Plaintiff’s First Amendment claims fail because Plaintiff’s First Amended Complaint does not adequately allege

¹ Plaintiff incorrectly alleges that the eighth date of incident occurred on October 26, 2020. Based on BWC, attached as exhibits to the Declaration of Felix De Jesus, the correct date is October 25, 2020.

that her speech was “chilled;” (3) Plaintiff fails to plausibly allege municipal liability; (4) Plaintiff fails to adequately plead intentional infliction of emotional distress, assault, and battery; (5) Plaintiff was not subjected to any force let alone excessive force during the course of the arrests on July 28, 2020, September 29, 2020, and October 25, 2020; (6) City Defendants are entitled to qualified immunity; and (7) Plaintiff failed to comply with the conditions precedent for suit related to the July 28, 2020, July 30, 2020, August 11, 2020, November 17, 2020, and December 11, 2020 incidents and, therefore, she cannot bring any state law claims.

PLEASE TAKE FURTHER NOTICE that pursuant to the Court’s Individual Rules of Practice, Local Civil Rules 6.1 and 6.4 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, and FRCP 6, plaintiff’s opposition papers, if any, are due on or before August 29, 2022, and defendants’ reply, if any, is due on or before September 6, 2022.

Dated: August 15, 2022
New York, New York

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cc: **BY ECF**
All counsels of record